S T A T E O F M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of Michigan Consolidated Gas Company for ex parte accounting Approvals related to the amortization of Manufactured Gas Plant environmental costs.	))))))	Case No. U-16535

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on September 21, 2011.

Exceptions, if any, must be filed with the Michigan Public Service Commission, P.O. Box 30221, 6545 Mercantile Way, Lansing, Michigan 48909, and served on all other parties of record on or before October 12, 2011, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before October 26, 2011. **The Commission has selected this case for participation in its Paperless Electronic Filings Program. No paper documents will be required to be filed in this case.**

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

MICHIGAN ADMINISTRATIVE HEARING SYSTEM
For the Michigan Public Service Commission

Sharon L. Feldman

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Sharon L. Feldman
Administrative Law Judge

September 21, 2011
Lansing, Michigan

S T A T E O F M I C H I G A N

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FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

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PROPOSAL FOR DECISION

I.

PROCEDURAL HISTORY

This Proposal for Decision addresses Michigan Consolidated Gas Company's February 7, 2011 application seeking approval to change the deferral and amortization accounting adopted in Case Nos. U-10149 and U-10150 for environmental costs associated with certain manufactured gas plant (MGP) sites.

The company's application sought *ex parte* approval, but on February 17, 2011, the Commission issued a notice of hearing setting this matter for a contested case hearing. Accordingly, on March 9, 2011, the company filed the testimony and exhibits of its controller, Peter M. Rynearson.

The company, Staff, and the Michigan Community Action Agency Association attended the March 10, 2011 prehearing conference. At this

prehearing conference, the MCAAA's petition to intervene was granted, and a schedule was established by agreement of the parties. Following this schedule, Staff filed the testimony of Daniel M. Birkam, and the MCAAA filed the testimony of William A. Peloquin, each opposing the company's application. Mich Con filed the rebuttal testimony of Mr. Rynearson on May 16, 2011.

At the evidentiary hearing on June 8, 2011, by agreement of the parties, the testimony of all three witnesses was bound into the record, and Exhibits A-1 through A-3 were admitted into evidence. Briefs were filed July 7, and reply briefs were filed July 21, 2011.

The record is contained in 65 pages of transcribed testimony and three exhibits. Following an overview of this record and the positions of the parties in section II below, the significant issues are discussed in section III.

II.

Overview of the Record and Positions of the Parties

In the subsections that follow, Mich Con's direct case is reviewed in subsection A, Staff's testimony and the MCAAA's testimony are reviewed in subsections B and C respectively, and Mich Con's rebuttal testimony is reviewed in subsection D. The positions of the parties as reflected in their briefs are reviewed in subsection E.

A. Mich Con

Mr. Rynearson explained that the MGP costs at issue relate to environmental assessment and remediation activities at former MGP sites.[1] He testified that Mich Con first recognized a liability for MGP-related costs in 1984, in the amount of $11.7 million, and in Case Nos. U-8635, U-8812 and U-8854, the Commission declined to authorize retroactive deferral of these costs. Responding to the Commission's decision in these cases indicating that the company could still seek deferral of future costs in excess of the $11.7 million, Mr. Rynearson explained, Mich Con requested a deferral mechanism in Case Nos. U-10149 and U-10150:

> In its Order in Case U-10149/10150 (pages 140-148) on October 28, 1993, the Commission did approve the requested deferral mechanism for recovery of any future costs in excess of the $11.7 million reserve, subject to a reasonableness and prudence review of all deferred costs for which MichCon sought recovery. While the Company did not receive rate recovery for the original $11.7 million in MGP costs in that case, future MGP costs in excess of the $11.7 million were to be deferred for accounting purposes subject to recovery through amortization expense in future rates.[2]

Mr. Rynearson testified that the deferral and amortization authorized in Case Nos. U-10149 and U-10150 was subsequently modified by the Commission's April 28, 2005 order in Case Nos. U-13898 and U-13899, to specify the treatment of insurance proceeds, and applied in Case No. U-15985. Mr. Rynearson testified that today, Mich Con accounts for the MGP environmental costs at issue as follows:

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[1] See 2 Tr 23. Mr. Rynearson's testimony, including rebuttal testimony, is transcribed at 2 Tr 20-40.
[2] See 2 Tr 24-25.

- MGP remediation payments are to be deferred for accounting purposes, subject to recovery for amortization expense in rates[;]

- The deferral mechanism allows an O&M expense item for the amortization and a working capital component to appear in a rate proceeding[;]

- Deferred amounts are subject to a reasonableness and prudence review prior to inclusion in rates[;]

- The MGP deferral balance is tracked by "vintage" year lawyers which are amortized over 10-years beginning with the start of the next calendar year after MGP remediation payments are disbursed[;]

- Insurance recoveries related to the MGP sites are amortized to offset the MGP amortization expense.[3]

In presenting the rationale for the company's proposal, Mr. Rynearson testified that for many years, the company has been able to offset the amortized amounts with insurance proceeds, but expects to receive no further insurance payments in connection with the MGP sites.[4] Mr. Rynearson testified that currently, the company has a net unamortized balance of $9.6 million, as shown in Exhibit A-1, consisting only of payments that have been reviewed and determined to have been reasonable and prudent. Projected increases in expenditures by year are shown in Exhibit A-2. Compared to historical expenditures averaging approximately $2 million per year, Mich Con now projects substantial expenditures in the next two years, totaling approximately $15 million.

Mr. Rynearson explained the company's proposal to suspend amortization of existing vintage accounts and delay the start of amortization of new vintage

[3] See 2 Tr 26, 33-34.
[4] See See 2 Tr 28.

accounts until rates are established in the company's next general rate case and the amortized amounts are expressly included in rates:

> Specifically, in the next fully contested general rate case subsequent to U-15985, amortization will recommence for vintage year layers that exist as of August 31, 2009 (the end of the U-15985 audit period), according to each layer's original amortization schedule until each separate layer is depleted. For new vintage layers established on or after September 1, 2009 (the next rate case audit period), amortization will commence for a ten-year period beginning with approval of recovery in rates as part of that next general rate case. Thereafter, any MGP costs incurred in between future rate cases will be deferred but not amortized until approval of recovery is ordered and the amortization of such costs is included in approved revenue requirements. Amortization of these incremental costs will begin over a subsequent ten-year period starting with the effective date of the rate order.[5]

He compared the current method to the proposed method in Exhibit A-2, using estimated costs over the period 2011 through 2016, and assuming Commission-approved rate revisions take effect in 2013 and 2016. Exhibit A-3 shows resulting net unamortized balances by vintage year for 2011-2016, under the current and proposed methods, based on the amortizations shown in Exhibit A-2.[6] The company requests approval of the change effective January 1, 2011, the date following the test year used in Case No. U-15985.

Mr. Rynearson testified that the reason the initial accounting had been adopted in Case Nos. U-10149 and U-10150 was to give the utility an incentive to minimize costs. He testified the utility would still have "a very real financial incentive" to minimize costs because:

> First, in light of current economic conditions and the impact of cost increases to its customers, the Company is keenly aware of the need to minimize the costs to be included in its rates.

[5] See 2 Tr 30.
[6] See 2 Tr 30-32.

> Consequently, it strives to minimize the need for rate increases by diligently controlling all costs, including MGP remediation, in a manner consistent with regulatory requirements and public safety. Second, since the recovery of any costs is subject to audit and potential disallowance by the MPSC Staff, the Company has the further incentive to only incur costs in a reasonable and prudent manner.[7]

Further, he contended that requiring the amortization to start before the expenditures have been reviewed and included in rates will encourage the company to file rate cases sooner. In his opinion, the current accounting for the MGP costs is neither reasonable nor equitable.[8]

B. Staff

Mr. Birkam testified on behalf of Staff.[9] He characterized the company's proposal as "shifting the start of the amortization . . . from the year after they are incurred to the time of recovery in rates."[10] He testified that Staff does not support the company's request for three reasons, focusing on the company's ability to protect its interest by filing rate cases when necessary, and concluding that the company had not identified any benefit to ratepayers from its proposal:

> 1) MichCon is able, by statute, to file a rate case every year, with a fully projected test year. Thus, if at the conclusion of one rate case, the Company ascertains its calculation of current rates won't allow for a reasonable overall rate of return in the following year, the Company has the option to file a new rate case right away, before the following year has occurred. This prevents the harm to the Company proposed by Mr. Rynearson.
>
> 2) Shifting the amortization recovery from the following year to the inclusion of costs in rates assumes that the existing rates can't cover these new costs, which, as these amortization expenses are

[7] See 2 Tr 35.
[8] See 2 Tr 35.
[9] Mr. Birkam's testimony is transcribed at 2 Tr 57-63.
[10] See 2 Tr 61.

> part of the overall company costs in rates, is not necessarily true. It may be true that a shift in revenue or a lowering of expenses in another area at any given time could allow the company to continue to earn a reasonable overall rate of return without a new rate case. This could allow MichCon to not need to file frequently, contrary to what Mr. Rynearson states above.
>
> 3) Shifting the amortization recovery to line up with a rate case order rather than the year following environmental cost occurrence provides no benefit to the ratepayers. It would only prove to alleviate a risk that the company is already protected from, as shown above in reasons one and two.[11]

C. MCAAA

Mr. Peloquin, testifying on behalf of the MCAAA, characterized the issue raised by the application as seeking to "synchronize" ratemaking with the financial expensing of the MGP amortization.[12] He testified that ratemaking has not been synchronized with amortization of the deferred balances of MGP-related environmental costs for other utilities, except for the unique circumstances of Peninsular Gas, in which the Commission provided for a direct 75/25 sharing of the expenses between ratepayers and shareholders.

To Mr. Peloquin, Mich Con provided no reason for the company to be treated differently from the other utilities. He testified to his understanding that the Commission has discretion in determining what expenses are appropriate utility expenses to be recovered from ratepayers, and he noted that Mich Con could not claim its present rates were inadequate, because it withdrew its most recent rate application in Case No. U-16400.

[11] See 2 Tr 62-63.
[12] Mr. Peloquin's testimony is transcribed at 2 Tr 42-56.

D. Rebuttal

In his rebuttal testimony, Mr. Rynearson disagreed that the ability to file testimony each year protects the company, contending that annual rate cases do not fully mitigate harm to the company when MGP amortization expenses are incurred before they are included in rates. To Mr. Rynearson, the requirement that costs be reviewed precludes recovery in rates of "fully projected" MGP costs, and thereby "conflicts with" 2008 PA 286.[13] Mich Con's proposal addresses this conflict, he contends, by allowing Mich Con to defer recognition of the expense amounts until the amounts are fully reviewed.

He further testified that once rates are established in a general rate case, a shift of other expenses could reduce the need to file another rate case, but that such shifting would not cover the significant cost increases the company is projecting for its MGP costs. And, while he acknowledged that the company does not contend that rates for 2011 are inadequate, he testified that the company's proposal is intended to address the long term.

Finally, he disagreed with Mr. Birkam's testimony that ratepayers would not benefit from the company's proposal, asserting that a delay in the company's need to file a rate case would benefit customers.[14]

E. Briefs

In its briefs, Mich Con argues that its proposal is reasonable, and focuses on the claim first raised in Mr. Rynearson's rebuttal testimony, that the requirement that costs be reviewed prior to being included in rates "precludes the

[13] See 2 Tr 38.
[14] See 2 Tr 39.

recovery in rates of fully projected MGP environmental costs."[15] Although Mich Con argues that annual rate cases do not mitigate the harm that occurs under the current accounting when MGP amortization expenses are incurred before the amortization expense is included in rates, Mich Con also argues that there will be no impact on ratepayers as a result of the accounting change, except that ratepayers will benefit from fewer rate cases being filed. And it argues that the expected increase in its costs, including a reduction in expected insurance proceeds, provides a legitimate basis for revising the accounting put in place for these expenses.

Staff relies on Mr. Birkam's testimony in arguing that Mich Con's proposal should not be adopted because there is no benefit to ratepayers and because it would lead to an increase in rates. Staff also agrees with the MCAAA that Mich Con's request to suspend the 15-year history of amortization of these costs is an attempt at "rate synchronization" that is not appropriate. To Staff, Mich Con is a large utility whose current general rates are sufficient to cover the company's expenses, including the $2.1 million amortization expense, and should the company's rates become insufficient, it can file a general rate case. Staff argues that Mich Con has provided no good explanation why it should be given special treatment in this regard.

In its reply brief, Staff disputes Mich Con's claim that a provision of 2008 PA 286 contained in MCL 460.6a(1) requires the Commission to change the current deferral and amortization accounting. Staff contrasts the ratemaking treatment the Commission adopted for MGP-related costs for Mich Con and

[15] See Mich Con brief, pages 8, 9, 10; reply brief, pages 3, 6-7, 9.

other large utilities to the treatment put in place for Peninsular Gas in Case No. U-11127,[16] indicating that in authorizing the different treatment for Peninsula Gas due to its unique circumstances, the Commission required the utility to pay 25% of the MGP remediation costs. Staff further argues that the language of MCL 460.6a(1) allowing utilities to file rate cases with projected costs does not require the Commission to select any particular methodology in setting rates.

The MCAAA relies heavily on Mr. Peloquin's testimony, asserting that Mr. Peloquin demonstrated that there is no supportable basis for Mich Con to be granted the accounting changes it seeks. To the MCAAA, Mich Con's current rates are presumed to be reasonable and adequate, and Mr. Rynearson's testimony confirms this. Further, the MCAAA argues that Mich Con has no legal right to recover the full amount of its MGP-related amortized expenses.

III.

DISCUSSION

In the following discussion of the parties' arguments, subsection A reviews the MGP background, subsection B addresses the company's claim that changes in circumstance support its request, subsection C addresses the dispute whether ratepayers benefit from the company's proposal, subsection D addresses the company's claim that the present regulatory treatment is inequitable, and subsection E addresses the company's claim that MCL 460.6a(1) requires the Commission to modify its prior orders.

[16] See July 31, 1997 order.

A. MGP background

The Commission's decision in Case Nos. U-10149 and U-10150 explained the historical background leading to Mich Con's responsibility for environmental remediation costs associated with former MGP operations:

> According to [Mich Con's witness] Mr. Dow, gas was manufactured from coal at these locations from the 1800s until the mid-1950's, when the increasingly widespread use of natural gas led to the expanded construction of interstate pipelines and, in turn, to the closing of these MGPs. The extraction of gas from coal during that earlier period resulted in by-products, such as coal tar, that are now recognized as environmentally harmful. Mr. Dow testified that Mich Con has been evaluating these MGP sites for the past decade and has discovered some soil contamination at each location.[17]

Mich Con's application for specific accounting treatment for these costs, Case No. U-10149, was joined with its rate case application, Case No. U-10150. The Commission's decision in the joint docket granted the requested treatment with specific modifications proposed by the Staff.

Among these modifications, the Commission required Mich Con to bear the carrying costs for the deferred but unreviewed costs until such costs could be reviewed in a rate case. The Commission explained the utility's request and Staff's proposed modification as follows:

> Mich Con proposed that carrying charges should begin when the deferrals are accrued. This means that they would be applied as soon as the utility incurred environmental assessment and remediation costs in excess of the existing $11.7 million reserve. In contract, the Staff recommended that carrying charges should not be recognized until after these costs have been reviewed and found to be prudently incurred in a rate case. According to the Staff,

[17] See October 28, 1993 order, page 140.

> delaying recognition of these carry charges would create incentive for Mich Con to contain its assessment and remediation costs.[18]

In adopting Staff's position, the Commission emphasized:

> Absent the accounting authority sought in this proceeding, the utility would be required to expense all assessment and remediation costs on an annual basis as incurred. This requirement would have provided Mich Con with a strong incentive to minimize its costs in an attempt to protect its shareholders. However, the potential harm to the utility's shareholders, as well as the incentive arising from it, is effectively eliminated by authority the utility to use deferred accounting for these costs. Thus, the Staff's proposal is an attempt to reestablish that incentive, at least in part, by precluding carrying charges from accruing on each vintage Year's accounts between rate cases.[19]

In Case Nos. U-10149 and U-10150, Mich Con also proposed delaying amortization of the deferred costs until the amortization could be included in rates. In adopting Staff's proposal that the amortization of each vintage year account should begin with the start of the following calendar year, the Commission explained:

> [Mich Con] argues that the Staff's proposal would automatically deny the utility an opportunity to recover all assessment and remediation costs because it is based on the mistaken premise that all of Mich Con's costs are presently being recovered in rates. Such a denial, the utility contends, would be "unprecedented." . . . According to Mr. Dow, no regulatory body has, to his knowledge, denied full recovery of a utility's environmental remediation costs. Mich Con therefore asserts that the Commission must adopt its proposal instead.
>
> The Commission disagrees with the utility's assertion. As noted on page 143 of the PFD, the Staff's proposal is supported by the following testimony from Ms. Devon:
>
> > "[Mich Con's] rates are set in order to provide the company with a fair opportunity to earn its authorized rate of return. By providing the deferral and

[18] See October 28, 1993 order, page 143.
[19] See October 28, 1993 order, pages 143-144.

> amortization of [its environmental remediation] expenses, it is anticipated that a normalized level of cost will be included in the company's income each year. This cost then becomes an ongoing operating expense and as such should not require any further deferral until the company's next rate case. If the change in expenses resulting from the amortization of remediation costs, when combined with all other changes in the company's revenue and expense levels, results in the need for a rate increase, the company always has the opportunity to file a rate case. If the company does not file a rate case, it can be assumed that the expenses are covered in current rates. . . .
>
> Moreover, notwithstanding the utility's assertion that no environmental assessment and remediation costs are currently included in its rates, adoption of the Staff's proposal will not necessarily deny Mich Con recovery of all such costs. Instead, due to regulatory lag, it is as likely that additional amounts will be recovered in the time between the end of the amortization period and the next rate case. The Commission therefore finds that the Staff's proposal is reasonable and should be adopted.[20]

Subsequently, in Case Nos. U-13898 and U-13899, rate and depreciation cases for Mich Con, the Commission addressed the treatment of insurance recoveries related to the MGP sites. The Commission further explained the background regarding MGP cost recovery in its decision in these cases, emphasizing its determination that MGP expenses should be shared between the company and the ratepayers:

> The starting point for this review is the Commission's long-standing determination that these unusual environmental expenses should be fairly apportioned between a utility's shareholders and its ratepayers. The Commission has followed this policy in its treatment of MGP remediation costs for all Commission-jurisdictional entities. MGP remediation costs arose because of the method of manufacture of gas in prior years—which was neither illegal nor improper. Residues from that manufacture of gas are

[20] See October 28, 1993 order, pages 146-147 (transcript citations omitted).

> now recognized as environmentally hazardous requiring proper remediation. While the Commission could have reasonably determined that these legacy costs were a shareholder responsibility, it did not. Equally so, the Commission determined that present ratepayers should bear all of the cost related to long-past energy production.
>
> To provide an equitable resolution of this complex historical environmental problem, the Commission has permitted deferral and amortization of the MGP remediation costs, which allow an O&M expense item and a working capital component to appear in a rate proceeding when the utility's revenue requirement is determined and its general rates are established. The O&M expense portion of cost recovery primarily falls on the company's ratepayers. However, the amounts so deferred and amortized do not earn a return as a working capital component (nor is the amount amortized recovered) until the costs are reviewed by the Commission and determined to be appropriate. This inability to earn on the deferred amount (or to recover amortized MGP costs prior to the Staff's review) falls on the utility's shareholders and also acts as an incentive for the utility to aggressively minimize all deferred amounts.[21]

B. Change in circumstance

As noted above, in Case Nos. U-10149 and U-10150, the Commission expressly rejected Mich Con's request to delay amortization of each vintage year MGP expense until the amortized expense amount could be placed into rates. Mich Con now bases its request in part on a change in circumstances since the deferral and accounting treatment was approved, contending that the company is no longer expecting to receive insurance proceeds of the same relative magnitude as the amortized portion of the expenses, and that expenses are expected to increase over historical levels.[22]

[21] April 28, 2005 order, page 24.
[22] See 2 Tr 29-30, 33-34.

A review of the Commission's decisions quoted above, however, shows that the deferral and amortization accounting was not premised on the expectation of any significant insurance recovery. Instead, the Commission recognized that the company's MGP costs could range from $15 million to $220 million.[23] That costs over the next couple of years may total $15 million, as Mr. Rynearson testified,[24] does not seem to constitute any change from what could reasonably have been anticipated when the deferral and amortization accounting was adopted.

C. Benefit to ratepayers

The parties dispute whether Mich Con's proposal will benefit ratepayers. To Staff and the MCAAA, there is no benefit to ratepayers from the company's proposed accounting changes, and the proposed changes may instead lead to higher rates.[25] Mich Con did not claim in its direct case that its proposal would provide a benefit to ratepayers, but in its rebuttal testimony, Mr. Rynearson asserted that ratepayers would benefit from a reduced need for the company to file rate requests.[26]

This PFD finds the company's claim that its need to file rate cases will be reduced is speculative. Many factors lead a utility to file rate cases, and the self-implementation provided for in MCL 460.6a provides a strong incentive for all utilities to file regular rate cases.

[23] See October 28, 1993 order, page 141.
[24] See 2 Tr 29-30.
[25] See Birkam, 2 Tr 63.
[26] See 2 Tr 39.

Moreover, as the company has described its proposed accounting changes, it appears that the company's proposal builds in yearly cost reductions between rate cases. Both the current and proposed deferral and amortization accounting methods rely on a 10-year amortization of each vintage year. Even suspending the vintage year amortizations until the company's next rate case, as it proposes, once rates are set, the older vintage years will start to become fully amortized. As the ten-year amortizations of prior vintage years expire each year after rates are set, the company's expenses fall. A year following a rate case, therefore, the company's rates would be based on a level of vintage-year MGP amortization expense the company would no longer be incurring, resulting in rates that are too high, all else equal. This is shown on Exhibit A-2: as the older vintage years drop out of the expense calculations in columns (l), (m), and (n), the company's O & M expenses, shown in line 25, decrease between rate cases.

While the ability to suspend the recognition of new MGP costs while the MGP expense levels built into rates decline each year might reduce the company's incentive to file a rate case, this approach cannot reasonably be described as a benefit to ratepayers.

Thus, this PFD finds that Mich Con has not shown any benefit to ratepayers from its proposal.

D. Equity

As noted above, Mich Con argues that the present deferral and amortization accounting is inequitable, contending that the difference in timing between the start of the amortization period for any vintage year and the review

and inclusion of the amortized costs in rates prevents the utility from fully recovering all of its MGP costs.[27]

Mich Con does not address the Commission's decision in Case Nos. U-13898 and U-13899, establishing that the regulatory treatment of these MGP costs was based on a sharing principle, that the costs of remediation should not be borne entirely by ratepayers, but also by the utility shareholders.[28] This sharing principle required the company to absorb the carrying costs and amortization of the deferred and unreviewed expenses between rate cases:

> This inability to earn on the deferred amount (or to recover amortized MGP costs prior to the Staff's review) falls on the utility's shareholders and also acts as an incentive for the utility to aggressively minimize all deferred amounts.[29]

The Commission applied the same sharing principle to all utilities.[30] Thus, the Commission long ago decided that shareholders should bear a portion of the costs associated with historical contamination of the MGP sites. Moreover, Mich Con accepted the Commission's decisions in these cases, benefitting from the ability to defer its MGP costs.

In failing even to acknowledge the sharing underlying the current deferral and amortization accounting, the company has provided no basis on which the Commission should revise the current accounting to alter this equitable sharing.

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[27] See Rynearson, 2 Tr 35; Mich Con brief, pages 8-12; Mich Con reply brief, pages 6, 8 ("MGP authorization expense should be treated in the manner proposed by MichCon which will afford MichCon the same opportunity for review and Commission approval of the contemporaneous recovery of MGP costs in rates similar to all other utility expenses.")

[28] See April 28, 2005 order, page 24, quoted above at n 21.

[29] See April 28, 2005 order, page 24, also quoted above at n 21.

[30] See, *e.g.*, Case No. U-10755 (March 11, 1996 order), pages 46-48. As Staff and the MCAAA note, as an alternative to this deferral and amortization, the Commission authorized Pen Gas to explicitly share MGP costs with the ratepayers, with the company obligated to pay 25% of the costs. See Case No. U-11127 (July 31, 1997 order).

Thus, this PFD concludes that the present deferral and amortization accounting is equitable, as previously determined by the Commission in Case Nos. U-10149 and U-10150, and in Case Nos. U-13898 and U-13899.

Moreover, Mich Con's perception of harm from the timing difference appears overstated even from its perspective that it should fully recover all deferred and amortized costs. As Mr. Birkam testified, the company can file a rate case every year to protect itself.[31] For example, if Mich Con were to file a rate case on December 31, 2011, after all its MGP expenses for the 2011 year had been paid, using a 2012 projected test year, the company's updated rates would take effect in the same year the company incurs the first-year amortization of the 2011 expenses reviewed in setting these rates, *i.e.* by June 1, 2012 if the rates are self-implemented. Thus, the company's claimed harm does not appear significant. Also, as noted above, older vintage year expense amortizations are dropping out, further reducing the company's expenses from year to year. In establishing the current accounting, the Commission similarly recognized:

> [N]otwithstanding the utility's assertion that no environmental assessment and remediation costs are currently included in its rates, adoption of the Staff's proposal will not necessarily deny Mich Con recovery of all such costs. Instead, due to regulatory lag, it is as likely that additional amounts will be recovered in the time between the end of the amortization period and the next rate case.[32]

E. MCL 460.6a claim

Mich Con first raised the claim that MCL 460.6a(1) requires it to fully recover its MGP-related environmental costs through Mr. Rynearson's rebuttal

[31] See 2 Tr 62.
[32] See Case Nos. U-10149 and U-10150 (October 28, 1993 order), page 147.

testimony, referencing 2008 PA 286.[33] The company's application does not make reference to this provision as a rationale for the company's proposal, nor does Mr. Rynearson's direct testimony. In making this claim, Mich Con relies on the following language in MCL 460.6a(1): "A utility may use projected costs and revenues for a future consecutive 12-month period in developing its requested rates and charges." From this, the company argues:

> Maintaining a requirement that any MGP environmental costs are reviewed before they are allowed to be reflected in base rates, which is what occurs under the current accounting treatment, precludes the recovery in rates of fully projected MGP environmental costs. As a result, only actual audited historical costs are reflected in base rates, leaving a gap in recovery even if rate cases are filed annually.[34]

Mich Con's claim is erroneous for several reasons. First, since this is not a rate case, and MCL 460.6a(1) applies only to rate applications, Mich Con has not explained how this provision can control the company's deferral and amortization accounting.[35]

Second, this provision on its face speaks only to a utility's rate case application, and in a rate case, does not constrain the Commission to use any particular method or formula for ratemaking. The Commission need not accept any projections made by the company in setting rates. Mich Con implicitly recognizes this when it also asserts that its accounting proposal is not intended to specify any particular rate case treatment, arguing:

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[33] See 2 Tr 38.
[34] See Mich Con brief, page 6.
[35] See, e.g., Mich Con brief, page 11 ("[A]s MichCon has repeatedly stated, the Company's requested accounting authority in this matter does not seek any recovery of any MGP environmental cost nor does the Company seek approval in this case of any projected environmental cost.")

> Approving MichCon's request in this case does not prevent Staff from taking whatever position it wishes in a future rate case regarding the amount of MGP amortization expense that should be recovered in MichCon's future rates.[36]

Note, too, that just as Mich Con argues that this proceeding is not a rate case, it argues repeatedly that ratepayers will not pay more if its request is granted.

More fundamentally, however, nothing in the reference to a projected test year in MCL 460.6a(1) appears to overturn any of the Commission's prior orders determining what costs are appropriate for recovery. As discussed above, the Commission has determined that the carrying costs and amortization of MGP vintage-year costs prior to review by the Commission are the responsibility of the company's shareholders. Consistent with MCL 462.25, the Commission's prior decisions are *prima facie* lawful and reasonable. Here, Mich Con has accepted the benefits of the deferral and amortization accounting adopted by the Commission, and as explained in subsection D above, has no equitable claim to change that accounting now.

Thus, contrary to the utility's claims, the company may file a rate application using "projected costs and revenues" that is consistent with the current deferral and amortization accounting. The appropriate MGP-related O&M costs to project for a future test year in any rate case would be the annual amortization of the company's reviewed expenditures, by vintage year, plus the annual amortization of any additional expenditures subject to review in the case, that the company will expense in the selected future test year. Consistent with the utility's selection of a particular future test year, vintage layers whose 10-year

[36]Mich Con reply brief, page 6.

amortization period expires prior to that test year would not be included in the amortization expense.

Because the Commission has determined that only reviewed costs are appropriate for recovery, and because the amortization amount for each reviewed vintage year can be projected for a future test year, there is no conflict between MCL 460.6a(1) and the current deferral and amortization accounting.

F. Recommendation

This PFD recommends that the Commission reject the company's requested change in the deferral and amortization accounting established for Mich Con. The company has not provided a compelling basis for the Commission to reconsider or reexamine its rejection of essentially the same request in Case Nos. U-10149 and U-10150. As explained above, in those cases the Commission denied Mich Con's request to delay amortization until MGP-related costs could be reviewed in a rate case. The company has not established a significant change in circumstance, or any benefit to ratepayers, in support of its request. Moreover, the company's proposal does not acknowledge and is not consistent with the Commission's decisions regarding the appropriate sharing of these unusual historical costs between ratepayers and shareholders. The company's claim that a contrary result is compelled by MCL 460.6a(1) is unsupported.

IV.

CONCLUSION

For the reasons stated above, this PFD recommends that the Commission deny Mich Con's request to revise the accounting treatment for MGP-related expenses.

All contentions of the parties not specifically addressed and determined herein are rejected, the Administrative Law Judge having given full consideration to all evidence of record and arguments in arriving at the findings and conclusions set forth in this Proposal for Decision.

MICHIGAN ADMINISTRATIVE HEARING SYSTEM
For the Michigan Public Service Commission

Sharon L. Feldman

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Sharon L. Feldman
Administrative Law Judge

September 21, 2011
Lansing, Michigan
drr